

RESOLUTION NO. 2016-109

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA APPROVING AMENDMENT NO. 1 OF THE ANIMAL SHELTERING SERVICES AGREEMENT BETWEEN CITY OF MARINA AND CITY OF SALINAS FOR CITY OF SALINAS TO CONTINUE PROVIDING ANIMAL SHELTERING SERVICES FOR THE CITY OF MARINA FOR TWO ADDITIONAL YEARS WITH NO SUBSTANTIVE CHANGES EXCEPT THE REMOVAL OF PARAGRAPH 4, SECTION (2) "ADVANCED PAYMENT" OF THE AGREEMENT, AUTHORIZE THE CITY MANAGER TO APPROVE FUTURE ANIMAL SHELTERING AGREEMENTS WITH THE CITY OF SALINAS OVER THE NEXT SIX YEARS UNLESS CITY OF SALINAS INCREASES THEIR FEES ABOVE TEN PERCENT OVER PREVIOUS AGREEMENT TERMS, AUTHORIZE THE FINANCE DIRECTOR TO MAKE NECESSARY ACCOUNTING AND BUDGETARY ENTRIES, AND AUTHORIZE CITY MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY SUBJECT TO FINAL REVIEW BY THE CITY ATTORNEY

WHEREAS, City of Marina requires the services of a third party animal sheltering provider to provide care for animals obtained through the Police Department's animal control services activities, and;

WHEREAS: City is committed to providing safe and humane sheltering of animals and such care is best found through a third party vendor, and;

WHEREAS, City of Salinas possesses the needed animal sheltering services, facilities, staff and infrastructure required to provide safe and humane housing for animals, and;

WHEREAS, City of Marina has had an animal sheltering agreement with City of Salinas since April 2011 and said relationship has been highly successful, and;

WHEREAS, City of Salinas' current agreement with City of Marina expires June 30, 2016, and;

WHEREAS, City Council approves Amendment No.1 ("**EXHIBIT A**") extending the animal sheltering agreement with City of Salinas until June 30, 2018 (an additional two years), approves the removal of Paragraph 4, Section E, Subsection (2) "Advance Payment" from the current October 15, 2014 agreement ("**EXHIBIT B**") and authorize City Manager to approve future animal sheltering agreements with the City of Salinas over the next six years unless City of Salinas increases their fees above ten percent over previous agreement terms.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Marina does hereby:

1. Approve Amendment No. 1 ("**EXHIBIT A**"), authorizing a two year extension of the current agreement for animal sheltering services between City and City of Salinas for specified animal control services, removal of Paragraph 4, Section E, Subsection (2) "Advance Payment" from the current October 15, 2014 agreement ("**EXHIBIT B**"), and;
2. Authorize City Manager to approve future animal sheltering agreements with the City of Salinas over the next six years unless City of Salinas increases their fees above ten percent over previous agreement terms, and;
3. Authorize Finance Director to make necessary accounting and budgetary entries, and;
4. Authorize City Manager to execute purchase agreement on behalf of City subject to final review by the City Attorney.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 19th day of July 2016 by the following vote:

AYES, COUNCIL MEMBERS: Amadeo, Brown, Morton, O'Connell, Delgado

NOES, COUNCIL MEMBERS: None

ABSENT, COUNCIL MEMBERS: None

ABSTAIN, COUNCIL MEMBERS: None

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

EXHIBIT A

City of Marina

ANIMAL SHELTERING SERVICES AGREEMENT—AMENDMENT NO. 1

This Amendment No. 1 to the Animal Shelter Services Agreement is entered into this 1st day of July 2016 by and among the City of Salinas, a California charter city and municipal corporation hereinafter referred to as “SALINAS,” and the City of MARINA, a California charter city and municipal corporation, hereinafter referred to as “MARINA”. SALINAS and MARINA are collectively referred to herein as “the Parties.”

RECITALS

WHEREAS, SALINAS and MARINA have a duty and a responsibility to protect and to maintain the health, safety, and welfare of their residents, including the duty and the responsibility to provide animal sheltering services pursuant to California and local law; and

WHEREAS, SALINAS owns and operates an animal shelter and provides animal sheltering services for the incorporated area of the SALINAS; and

WHEREAS, MARINA does not have its own animal shelter facility and desires for SALINAS to provide animal sheltering services for MARINA; and

WHEREAS, SALINAS desires to provide animal sheltering services to MARINA for the compensation to be provided herein; and

WHEREAS, on September 1, 2014, the Parties entered into an Animal Sheltering Agreement for SALINAS to provide animal sheltering services to MARINA; and

WHEREAS, the Original Animal Sheltering Agreement had a two-year term; and

WHEREAS, the parties desire to extend the term of the agreement for an additional two years and the contract agreement period ends on June 30, 2016; and

NOW, THEREFORE, in mutual consideration of the terms and conditions set forth in the Original Animal Shelter Services Agreement, the Parties agree to extend the term of the Original Animal Shelter Services Agreement, as follows:

TERMS

1. Renewal Term. The term of the Original Animal Shelter Services Agreement shall be further extended for an additional two years commencing as of July 1, 2016 (“Effective Date”) and continuing through June 30, 2018 (the “Renewal Term”). The Parties understand and acknowledge that there shall be no automatic extensions of the renewal term without mutual written consent of the Parties.

2. Advance Payment. The parties agree that the “Advance payment” required by Paragraph 4, Section E, Subsection (2) has been made and that no other “Advance payment” is required as a term and condition of this renewal.

IN WITNESS WHEREOF, the undersigned, as authorized representatives of the City of Salinas and the City of Marina have entered into this Amendment No. 1 as of the date first written above.

CITY OF SALINAS

Ray Corpuz, City Manager

Date

APPROVED AS TO FORM:

Christopher A. Callihan, City Attorney

Date

CITY OF MARINA

Layne Long, City Manager

Date

ATTEST:

Rob Wellington, City Attorney

Date

ATTEST:

City Clerk

Date

REVIEWED:

Risk Management

Date

EXHIBIT B

AGREEMENT FOR ANIMAL SHELTER SERVICES

THIS AGREEMENT is made and entered into on September 1st, by and between the City of SALINAS, a California charter city and municipal corporation hereinafter referred to as "SALINAS," and the City of MARINA, a California charter city and municipal corporation, hereinafter referred to as "MARINA". SALINAS and MARINA are collectively referred to herein as "the Parties."

RECITALS

WHEREAS, SALINAS and MARINA have a duty and a responsibility to protect and to maintain the health, safety, and welfare of their residents, including the duty and the responsibility to provide animal sheltering services pursuant to California and local law; and

WHEREAS, SALINAS owns and operates an animal shelter and provides animal sheltering services for the incorporated area of the SALINAS; and

WHEREAS, MARINA does not have its own animal shelter facility and desires for SALINAS to provide animal sheltering services for MARINA; and

WHEREAS, SALINAS desires to provide animal sheltering services to MARINA for the compensation to be provided herein; and

NOW, THEREFORE, in mutual consideration of the covenants, terms, and conditions set forth below, the Parties agree as follows:

1. **TERM**

This Agreement shall be effective and commence as of September 1st, 2014 and shall remain in effect until June 30, 2016, unless sooner terminated pursuant to the terms of this Agreement.

2. **NOTICE**

Any notice, demand, request, consent, or approval that either party hereto may or is required to give the other pursuant to this Agreement shall be in writing and shall be either personally delivered or sent by first class mail, addressed as follows:

To SALINAS:

Attn: Cindy Burnham, Animal Services
Manager
City of SALINAS Animal Services
222 Lincoln Avenue
SALINAS, CA 93901

To MARINA:

Attn: Edmundo Rodriguez, Chief of
Police
City of MARINA Police Department
211 Hillcrest Avenue
MARINA, CA 93933

Either party may change the address to which subsequent notice and/or other communications can be sent by giving written notice designating a change of address to the other party, which shall be effective upon receipt.

3. SCOPE OF SERVICES

A. Commencement of Services. Services under this Agreement shall commence September 1st, 2014

B. Acceptance of Animals from MARINA.

(1) SALINAS shall accept at its animal shelter, 144 Hitchcock Road, SALINAS, (“animal shelter”) all stray, lost, and surrendered dogs, cats and other domestic animals (not to include wildlife or livestock) delivered to the SALINAS animal shelter by MARINA animal control officers and/or by MARINA residents; provided, however, that SALINAS is only obligated to accept such animals within the structural and humane operating capacity of the shelter. In the event the animal shelter may not accommodate a large number of confiscated animals at one time, MARINA may need to make alternate arrangement for housing of such animals. SALINAS will make reasonable and good faith efforts to notify MARINA should the shelter be at capacity so as to preclude the acceptance of additional animals from MARINA, which notice may, without limitation, be by writing, e-mail, text message, personal contact, and/or phone call, taking into account the circumstances at the time of the notice. If additional housing is required due to a large number of animals confiscated by MARINA, those housing costs would be at the expense of MARINA.

(A) SALINAS will accept animals that are under “protective custody”, “confiscate”, “rabies quarantine” or other situation requiring an extended hold time, from MARINA as long as the length of stay has been determined by MARINA. As SALINAS is not equipped to hold and care for animals long term, if this should occur, MARINA will work with SALINAS to find a suitable alternative to housing the animal(s). If other suitable housing is needed, it would be at MARINA’s expense. For the scope of this agreement, long term is considered up to 14 days.

(2) MARINA animal control officers or employees may use SALINAS’ night drop kennels after hours to place found stray animals as long as all pertinent information is provided (including but not limited to where the animals was found, who brought animal in and any owner information if known). MARINA residents will not have access to these after-hours kennels.

(3) SALINAS may limit acceptance of stray, lost, and surrendered animals from MARINA residents to those hours the animal shelter is open to the public. “MARINA residents” for purposes of this Agreement will be confirmed by current photo identification showing a MARINA address, or by proof of a photo identification card and bill addressed to the resident at a location in MARINA. SALINAS will accept stray/lost animals found within MARINA city limits from those not residing in MARINA. Proof of jurisdiction will be confirmed by verifying animal’s found location with a map of MARINA city limits.

(4) SALINAS shall accept dead dogs, cats, and other domestic animals weighing not more than 150 pounds from both MARINA residents and animal control officers.

C. Delivery and Processing of Animals (Intake)

When MARINA staff delivers animals to SALINAS, SALINAS' staff shall process the animals according to SALINAS' protocols. When possible, MARINA staff will call SALINAS to notify them of the incoming animals and as well as any pertinent information related to the animals. Once the animal is placed in the appropriate receiving room kennel, information related to each individual animal will be left on the kennel the animal is placed in and SALINAS staff will be notified of the animal's placement in receiving. Information requested includes where the animal was located, possible owner information, any notification or communication to the owner by MARINA staff, medical status or condition and anything else that SALINAS staff may need to know in order to properly conduct notifications or provide care for the animal while in SALINAS' custody.

D. Hours of Operation. SALINAS, in its sole discretion, shall determine the days and hours of operation of the shelter. At the time of execution of this Agreement, the shelter is open to the public Tuesday - Saturday, 12:00 p.m. to 5:00 p.m., and SALINAS shall provide advance notice to MARINA as soon as practicable in the event SALINAS determines to change the hours the shelter is open to the public. No amendments are necessary to this Agreement in order to change the hours of operation for the animal shelter.

E. Care of Animals.

(1) General Care. SALINAS shall provide shelter, food, water, and veterinary care for animals received hereunder in compliance with applicable State of California statutes and regulations and in accordance with generally recognized standards for the humane treatment of animals in the same manner as if the animals were received from within the city limits of SALINAS.

(2) Emergency Veterinary Care. Emergency veterinary care, except as provided in this paragraph is excluded from the scope of this Agreement (see Exclusions, below). Provided however, in the event SALINAS determines that animals delivered by MARINA to SALINAS' animal shelter are in need of emergency veterinary care or are in need of ongoing critical care from previously treated emergency needs, as determined in SALINAS' sole discretion by its shelter veterinarian, SALINAS may, in its sole discretion, have such animals treated at MARINA'S expense by SALINAS'S animal shelter veterinarian or by SALINAS' contracted veterinarians. SALINAS will make all reasonable attempts to contact MARINA in advance of providing the emergency veterinary care, given the circumstances. MARINA shall provide SALINAS appropriate contact e-mails and phone numbers for MARINA employees on weekends, weekdays and after hours for this purpose. SALINAS shall make reasonable attempts to notify MARINA via e-mail or phone of its intent to begin emergency veterinary care at least two hours prior to initiating the additional emergency and/or critical care service, unless the circumstances necessitate otherwise. Upon execution of this Agreement and as e-mail address changes are made, MARINA shall inform SALINAS in writing of the e-mail address to use.

(3) Immediate Euthanasia for Irremediable Suffering. In accordance with State of California Food and Agriculture Code Section 17006, SALINAS may immediately euthanize animals received from MARINA that are, in SALINAS'S sole judgment, irremediably suffering from a serious illness or severe injury or are newborn without their mothers. For the scope of this agreement, animals that are under 8 weeks of age are not required to be held and, at the discretion of SALINAS, can be immediately euthanized.

- F. Return to Owner and Notices re: Animals Received, Discretionary Waiver of Fees. SALINAS shall provide for the redemption of animals by owners and shall issue all appropriate notices relating to animals received and the disposal of such animals in the same manner as if the animals were received from within the city limits of SALINAS, e.g., telephone calls and/or issuance of written notices to last owner of record if available for animals implanted with microchips and for animals wearing licenses. SALINAS shall not waive any fees without the consent of MARINA. If MARINA approves fees being waived to MARINA resident, then SALINAS will not collect approved fees and MARINA will be billed those fees.
- (1) Billing. SALINAS will not bill any unpaid fees due to SALINAS by MARINA residents. MARINA will be responsible for any unpaid balances due to SALINAS and can then collect from MARINA residents at their discretion.
- G. Control and Ownership of Animals.
- (1) Control. Upon proper completion of intake processing of animals delivered by MARINA, control of the animals, excepting animals subject to legal holds, shall belong to SALINAS in the same manner as if the animals were received from within the city limits of SALINAS, and MARINA shall no longer exercise control of the animals.
- (2) Legal Holds. SALINAS shall control and care for animals delivered by MARINA subject to legal holds in the same manner as if the animals were received from within the city limits of SALINAS. For purposes of this Agreement, “legal holds” means those animals that are confiscated for neglect, cruelty, bite quarantine, vicious, dangerous or similar circumstances. Access and control by MARINA of such animals for purposes of evidence/prosecution shall be available during the hours that SALINAS’ animal shelter is open to the public or upon advance coordination by MARINA with SALINAS for access during other hours. Access to such animals by other persons (e.g., owners, public) shall be restricted in accordance with the practices of SALINAS for animals in like situations received from within the city limits of SALINAS. Upon completion of the legal holds as evidenced by a certified copy of the order of disposition of the animal and a written letter or email signed by MARINA’s Chief of Police, or designee, confirming the circumstances leading to the order and advising that the order is final and no longer subject to appeal or further litigation, SALINAS shall carry-out the terms of the order, excluding any exercise of services in the field.
- (3) Stray and Surrendered Animals. Upon completion of the required hold periods for each stray and surrendered animal received hereunder, SALINAS shall thereafter be the owner of such animals and may euthanize, redeem, adopt or transfer such animals as SALINAS deems appropriate in SALINAS’s sole discretion in the same manner as if the animals were received from within the city limits of SALINAS.
- H. Animal Status Information / Information Technology. SALINAS shall maintain software and technology to provide MARINA with real-time information regarding all animals received from MARINA jurisdiction. SALINAS currently utilizes Chameleon software.
- I. Limitations / Exclusions. Limitations and/or exclusions from the provision of services hereunder are the following:
- (1) Dispatch Services. MARINA dispatch and field assistance coordination shall be through MARINA’S dispatch.

- (2) Licensing. MARINA will maintain their own dog licensing program.
- (3) Field Services. SALINAS shall not provide any animal control/field services for MARINA. This includes pick up of stray animals from other local shelters.
- (4) Wildlife or livestock. SALINAS shall not accept any wildlife or livestock from MARINA.
- (5) Emergency Veterinary Care. MARINA shall have animals in need of emergency veterinary care treated by MARINA'S contracted veterinarians prior to MARINA's delivery of such animals to SALINAS' animal shelter. Such animals shall not be delivered to SALINAS' animal shelter until such animals are stable and no longer in need of critical care. Failure of MARINA to follow this process may result in extra charges for service as provided in Paragraph E, 2, above.
- (6) Breeding Permit Program: SALINAS shall not inspect, issue breeding permits or otherwise manage MARINA'S breeding permit program for MARINA residents.
- (7) Dangerous/Vicious Dog Program: SALINAS shall not manage a Potentially Dangerous Dog or Vicious Dog program for MARINA.
- (8) Large Dead Animal Disposal. SALINAS shall not accept for disposal from either MARINA residents or assigned MARINA animal control officers, dead animals over 150 pounds (e.g., various livestock and horses).
- (9) SALINAS's Community Cats / TNR Programs. Except as MARINA may coordinate with SALINAS for Community Programs, above, MARINA understands that feral cats not eligible for return to MARINA jurisdiction under MARINA'S programs or for adoption/rescue may be euthanized. Should MARINA decide to participate in SALINAS' Community Cats/TNR programs for feral cats in MARINA, coordination with SALINAS can be determined at that time should funding allow.
- (10) Spay-Neuter Voucher Program. As SALINAS will not be collecting state fine fees for MARINA, unless determined otherwise, SALINAS will not offer a spay/neuter voucher for MARINA residents. MARINA will coordinate its own Spay-Neuter Incentive Program for animals owned by MARINA residents. Should MARINA decide to have SALINAS issue MARINA spay/neuter incentive, those shall be provided to SALINAS at MARINA's sole cost and expense.
- (11) Hearings. SALINAS shall not be responsible for coordinating or conducting hearings for MARINA, e.g., hearings concerning neglect, cruelty, nuisance animals, and vicious animals.
- (12) Special Supplies. MARINA shall be responsible for supplying to SALINAS any supplies, stationary, notices, forms or similar items that MARINA may require be issued with the MARINA logo. All such items are subject to approval by SALINAS'S Manager and shall be provided at MARINA'S sole cost and expense.

4. COMPENSATION AND INVOICING

- A. Compensation. SALINAS requires additional staffing in the kennels to meet the scope of this agreement. As this agreement is contingent on that additional staffing, MARINA will be billed accordingly to cover that cost.

- (1) MARINA will owe a flat rate of \$3100 each month for up to 20 sheltered animals.
- (2) If more than 20 animals are brought in , MARINA will be billed \$155 per animal (for up to 10 days holding time per animal).
 - (a). Additional fees may apply to MARINA on a case by case basis including veterinary exams and/or treatment as required, immediate euthanasia of under aged or critically injured animals, owner notification letters, bite reports or any other costs that SALINAS incurs that are due to MARINA animals as indicated in SALINAS' fee schedule (attached).
 - (b). Animals that need to be held for over 10 days will be then billed for each additional day over the 10 days at the rate listed on SALINAS' fee schedule.
 - (c) Feral cats with kittens and kittens and puppies: If a feral cat is brought in by MARINA and has a litter of kittens while in the stray holding time, MARINA will only be billed for one animal. If kittens and puppies are brought in from MARINA and are over 8 weeks of age and old enough to be vaccinated, they will each count as one animal, even if housed together.

E. Invoicing, Reports and Payments.

- (1) Quarterly Basis. SALINAS shall invoice MARINA during April for the period January 1-March 31; in July for the period April 1-June 30; in October for the period July 1-September 30 and in January for the period October 1-December 31. The period July 1st, 2014 through September 30th, 2014 shall constitute the initial quarterly invoicing period even though this agreement begins on September 1, 2014.
- (2) Advance payment. To ensure that SALINAS have to advanced funds in order to carry out this agreement, MARINA will make an advance payment equal to one quarter of the regular monthly amount of this agreement upon start date of this agreement. Quarterly billing will continue each quarter after that. Upon termination of the agreement, the advanced payment can be used against any outstanding balances. The advance payment amount due at the start of this agreement would be \$9300 ($\$3100 \text{ per month} \times 12 \text{ months} = \$37,400 \text{ annual fee. } \$37,400 / 4 \text{ quarter} = \9300 per quarter).
- (3) Reports. SALINAS shall provide the following quarterly reports to MARINA in conjunction with SALINAS'S quarterly invoices:
 - (i) The number of animals delivered to the SALINAS'S animal shelter from MARINA from whatever source or reason.
 - (ii) The number of redemptions (returns to owners) by MARINA residents by name and address and animal species during the previous quarter.
- (4) Payments.
 - (i) MARINA shall remit payment of all undisputed charges to SALINAS within 30 days after receipt of the quarterly invoice and reports. If SALINAS does not provide the above-referenced quarterly reports to MARINA in conjunction with a quarterly invoice, MARINA shall not be obligated to remit payment for

such invoice until such time as all of the required information has been provided to MARINA by SALINAS.

- (ii) Any payment of undisputed fees not received by SALINAS within 30 days after SALINAS provides invoice and required reports, shall be cause for termination of this Agreement by SALINAS, and SALINAS shall be entitled to recover interest on any balance remaining unpaid for more than 30 days after the due date, calculated at the rate of interest received by the SALINAS Treasury's Pooled Investment Fund.

5. COMPLIANCE WITH LAWS

The parties hereto shall observe and comply with all applicable Federal, State, and SALINAS laws, regulations and ordinances.

6. GOVERNING LAWS AND JURISDICTION

This Agreement shall be deemed to have been executed and to be performed within the State of California and shall be construed and governed by the internal laws of the State of California. Any legal proceedings arising out of or relating to this Agreement shall be brought in Monterey County or in the appropriate federal court with jurisdiction over this matter.

7. EMPLOYMENT STATUS / SALINAS AS INDEPENDENT CONTRACTOR

At all times during the term of this Agreement, SALINAS employees performing services pursuant to this Agreement are not agents or employees of MARINA but are employees of SALINAS acting as an independent contractor to MARINA. SALINAS shall have control over the means, methods, techniques, sequences, procedures, and results for performing and coordinating the services required by this Agreement. All terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging or any other terms of employment shall be determined by SALINAS, and MARINA shall have no right or authority over SALINAS' employees or the terms of their employment with SALINAS. Neither SALINAS nor any third persons or subcontractors of SALINAS shall be entitled to workers' compensation benefits from MARINA if such persons sustain injury in the course of performing services under this Agreement. Neither SALINAS nor any third persons or subcontractors of SALINAS shall be entitled to any other benefits payable to employees of MARINA. MARINA shall not be liable for any act or omission of any SALINAS officer or employee unless specifically provided elsewhere in this Agreement. MARINA shall not be liable for the direct payment of any salaries, wages, compensation, or other benefits to any SALINAS employee performing services pursuant to this Agreement, or for compensation or indemnity to any SALINAS employee for injury or sickness arising out of his or her employment.

8. INDEMNIFICATION

A. MARINA shall defend, indemnify and hold harmless SALINAS, its City Council, officers, Managers, agents, employees and volunteers from and against all demands, claims, actions, liabilities, losses, damages, and costs, including reasonable attorneys' fees, arising out of or resulting from the performance of the Agreement, caused in whole or in part by the negligent or intentional acts or omissions of MARINA'S officers, Managers, agents, employees, and volunteers.

B. SALINAS shall defend, indemnify, and hold harmless MARINA, its officers, Managers, agents, employees, and volunteers from and against all demands, claims,

actions, liabilities, losses, damages and costs, including reasonable attorneys' fees, arising out of or resulting from the performance of the Agreement, caused in whole or in part by the negligent or intentional acts or omissions of SALINAS' City Council, officers, Managers, agents, employees, or volunteers.

- C. It is the intention of SALINAS and MARINA that the provisions of this section be interpreted to impose on each party responsibility to the other for the acts and omissions of their respective officers, Managers, agents, employees, and volunteers.
- D. The provisions of this indemnity shall survive the expiration or termination of this Agreement.

9. INSURANCE

Each party, at its sole cost and expense, shall carry insurance –or self-insure - its activities in connection with this Agreement, and obtain, keep in force and maintain, insurance or equivalent programs of self-insurance, for general liability, workers compensation, and business automobile liability adequate to cover its potential liabilities hereunder. Each party agrees to provide the other thirty (30) days' advance written notice of any cancellation, termination or lapse of any of the insurance or self-insurance coverages.

- A. SALINAS will maintain the right to subrogation, in favor of SALINAS, related to the terms of this agreement should it be needed.

10. SUBCONTRACTS, ASSIGNMENT

- A. SALINAS may subcontract any of the services delivered under this Agreement as SALINAS deems appropriate in SALINAS'S sole discretion. SALINAS shall remain legally responsible for the performance of all contract terms including work performed by third parties under subcontracts.

- B. This Agreement is not assignable by either party in whole or in part, without the prior written consent of the other party.

11. AMENDMENT AND WAIVER

Except as provided herein, no alteration, amendment, variation, or waiver of the terms of this Agreement shall be valid unless made in writing and signed by both parties. Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent, or any other right hereunder. No interpretation of any provision of this Agreement shall be binding upon SALINAS unless agreed in writing by Manager and counsel for SALINAS.

12. SUCCESSORS

This Agreement shall bind the successors of MARINA and SALINAS in the same manner as if they were expressly named.

13. TIME

Time is of the essence of this Agreement.

14. INTERPRETATION

This Agreement shall be deemed to have been prepared equally by both of the parties, and the Agreement and its individual provisions shall not be construed or interpreted more favorably for one party on the basis that the other party prepared it.

15. MANAGER

As used in this Agreement, "Manager" shall mean the Manager of SALINAS' Animal Services or his/her designee.

16. DISPUTES

In the event of any dispute arising out of or relating to this Agreement, the parties shall attempt, in good faith, to promptly resolve the dispute mutually between themselves. SALINAS shall not be required to continue providing services hereunder if MARINA is more than 60 days delinquent (90 days after date of invoice) in making payments for invoiced services. If the dispute cannot be resolved within 15 calendar days of initiating negotiations or such other time period as may be mutually agreed to by the parties in writing, either party may pursue its available legal and equitable remedies, pursuant to the laws of the State of California. Nothing in this Agreement or provision shall constitute a waiver of any of the government claim filing requirements set forth in Title 1, Division 3.6, of the California Government Code or as otherwise set forth in local, state and federal law.

17. TERMINATION

- A. This Agreement may be terminated by mutual written consent of the parties.
- B. Either party may terminate this Agreement without cause upon providing 90 days written notice to the other party. Notice shall be deemed served on the date of mailing.
- C. Either party may terminate this Agreement for cause upon providing 14 days written notice to the other party stating the cause.
- D. Either party may terminate or amend this Agreement immediately upon giving written notice to the other party:
 - (1) If advised that funds are not available from external sources for this Agreement or any portion thereof, including if distribution of such funds is suspended or delayed;
 - (2) If funds for the services and/or programs provided pursuant to this Agreement are not appropriated by the State;
 - (3) If funds in either party's yearly proposed and/or final budget are not appropriated for this Agreement or any portion thereof; or
 - (4) If funds that were previously appropriated for this Agreement are reduced, eliminated, and/or re-allocated as a result of mid-year budget reductions.
- E. The Manager of SALINAS' Animal Services Department has authority to terminate this Agreement on behalf of SALINAS for any of the reasons authorized in this Paragraph 17.

18. AUDITS AND RECORDS

SALINAS shall maintain adequate financial records during the term of this Agreement to document its costs of providing services under this Agreement. Such records shall be made available for inspection and audit by MARINA upon reasonable notice. Pursuant to State of California Government Code Section 8546.7, MARINA and SALINAS records shall be subject to examination and audit by the State Auditor for a period of three years after final payment by MARINA to SALINAS pursuant to this Agreement. MARINA and SALINAS shall retain all records relating to the performance of this Agreement for this three-year period, except that records pertaining to any audit then in

progress, or any claims or litigation, shall be retained beyond such three-year period until final resolution of such audit, claim or litigation.

19. PRIOR AGREEMENTS

This Agreement constitutes the entire contract between MARINA and SALINAS regarding the subject matter of this Agreement. Any prior agreements, whether oral or written, between MARINA and SALINAS regarding the subject matter of this Agreement are hereby terminated effective immediately upon full execution of this Agreement.

20. SEVERABILITY

If any term or condition of this Agreement or the application thereof to any person(s) or circumstance is held invalid or unenforceable, such invalidity or unenforceability shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Agreement are declared severable.

21. FORCE MAJEURE

Neither party shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without fault or negligence of such party. Such events shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism, or other disasters, whether or not similar to the foregoing, and acts or omissions or failure to cooperate of the other party or third parties (except as otherwise specifically provided herein).

22. SURVIVAL OF TERMS

All services performed and deliverables provided pursuant to this Agreement are subject to all of the terms, conditions, price discounts and rates set forth herein, notwithstanding the expiration of the initial term of this Agreement or any extension thereof. Further, the terms, conditions and warranties contained in this Agreement that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Agreement shall so survive.

23. AUTHORITY TO EXECUTE

Each person executing this Agreement represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this Agreement for or on behalf of the parties to this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized.

24. COUNTERPARTS

This Agreement may be executed in counterparts. The Agreement shall be deemed executed when it has been signed by both parties.

(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, the undersigned, as authorized representatives of the City of Salinas and of the City of Marina have entered into this Agreement as of the date first written above.

CITY OF SALINAS, the "Service Provider"

Ray Corpus, City Manager

Date

APPROVED AS TO FORM:

Christopher A. Callihan, City Attorney

Date

CITY OF MARINA

Layne Long, City Manager

Date

ATTEST:

Rob Wellington, City Attorney

Date

ATTEST:

City Clerk

Date

REVIEWED:

Risk Management

Date

July 5, 2016

Item No. **8g(1)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of July 19, 2016

CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2016-, APPROVING AMENDMENT NO. 1 OF THE ANIMAL SHELTERING SERVICES AGREEMENT BETWEEN CITY OF MARINA AND CITY OF SALINAS FOR CITY OF SALINAS TO CONTINUE PROVIDING ANIMAL SHELTERING SERVICES FOR THE CITY OF MARINA FOR TWO ADDITIONAL YEARS WITH NO SUBSTANTIVE CHANGES EXCEPT THE REMOVAL OF PARAGRAPH 4, SECTION E, SUBSECTION (2) “ADVANCED PAYMENT” OF THE AGREEMENT, AUTHORIZE THE CITY MANAGER TO APPROVE FUTURE ANIMAL SHELTERING AGREEMENTS WITH THE CITY OF SALINAS OVER THE NEXT SIX YEARS UNLESS CITY OF SALINAS INCREASES THEIR FEES ABOVE TEN PERCENT OVER PREVIOUS AGREEMENT TERMS, AUTHORIZE FINANCE DIRECTOR TO MAKE NECESSARY ACCOUNTING AND BUDGETARY ENTRIES, AND AUTHORIZE CITY MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY

RECOMMENDATION:

It is recommended that the City Council:

1. Consider adopting Resolution No. 2016-, approving Amendment No. 1 of the Animal Sheltering Services Agreement between City of Marina and City of Salinas for City of Salinas to continue providing animal shelter services for the City of Marina for two additional years with no substantive changes except the removal of Paragraph 4, Section E, Subsection (2) “Advanced Payment” of the agreement, and;
2. Authorize City Manager to approve future animal sheltering agreements with the City of Salinas over the next six years unless City of Salinas increases their fees above ten percent over previous agreement terms, and;
3. Authorize Finance Director to make necessary accounting and budgetary entries, and;

4. Authorize City Manager to execute the agreement on behalf of City subject to final review by the City Attorney.

BACKGROUND:

The City of Salinas has provided contracted animal sheltering services for the City of Marina since April 2011 (Resolution No. 2011-60). The agreement was renewed on October 14, 2014 (Resolution No. 2014-115) and will expire on June 30, 2016.

The working relationship established with the City of Salinas has been very positive and the level of service excellent. It is the Police Department's desire to continue this relationship.

The continued use of a third party to provide animal sheltering for the City of Marina is critical. The City does not possess sufficient animal sheltering facilities, lacks the personnel to properly manage a full service sheltering facility, and the cost required to bring the City to a level to provide full animal sheltering services is monetarily prohibitive.

Approval of Amendment No. 1 ("**EXHIBIT A**") will extend the animal sheltering agreement for two (2) years with an expiration date of June 30, 2018.

ANALYSIS:

The City of Salinas Animal Shelter possesses a state of the art animal sheltering facility with medical, adoption and general care services. Their service reputation is outstanding and service to the City of Marina has been excellent. The Police Department has found the staff professional, accommodating and ever ready to assist when needed.

The current agreement was established on October 15, 2014 ("**EXHIBIT B**") with City of Salinas and will provide the same services as agreed to in that agreement. These services include providing full veterinary services, animal adoption services, and return to owner services. A full scope of services is located in Section 4 of the proposed agreement.

For clarification purposes, the agreement is for animal sheltering services only. The Police Department will continue to provide animal control field services that encompass pick-up of animals, disposal of deceased animals, enforcement activities, providing emergency veterinary services, educational programs and investigation of animal complaints.

Costs will remain the same and can be found in Section 4 "Compensation and Invoicing" of the agreement.

The only change to the agreement is the removal of Paragraph 4, Section E, Subsection (2) "Advance Payment". The subsection states:

To ensure that SALINAS have to advanced funds in order to carry out this agreement, MARINA will make an advance payment equal to one quarter of the regular monthly amount of this agreement upon start date of this agreement. Quarterly billing will continue each quarter after that. Upon termination of the agreement, the advanced payment can be used against any outstanding balances. The advance payment amount due at the start of this agreement would be \$9300 (\$3100 per month x 12 months=\$37,400 annual fee. \$37,400/4 quarter = \$9300 per quarter).

Entering into an agreement for animal sheltering services is vital to providing proper care of animals taken into custody by the Police Department. At present, the City does not possess the physical facilities or personnel to provide the care and services for Marina animals.

The City of Salinas Animal Shelter meets animal sheltering requirements as set forth by law and by the Police Department and they can absorb the animals the City takes in every year. The

Salinas facility is close to the City, which is advantageous in regards to animal transport time performed by the community services officers and its proximity is convenient for Marina residents.

Research showed that continuing the agreement with City of Salinas would continue to be more cost effective than contracting with the only other two entities that provide animal sheltering services, County of Monterey and the Monterey County Society for the Prevention of Cruelty to animal (SPCA).

Based on City of Salinas' Animal Shelter's performance during the life of the previous agreements, it is the recommendation of the Police Department that the City approve the proposed amendment extending the agreement for two years and authorize the City Manager to extend the agreement over the next six years unless City of Salinas increases their fees above ten percent over the previous agreement term.

FISCAL IMPACT:

Should Council approve this request, no additional fees or charges will be levied as a result of adoption of Amendment 1. All fees and charges as set forth in the agreement were approved by City Council in October of 2014 (Resolution No, 2014-115) and will remain in effect except for the "Advance Payment" clause in Paragraph 4, Section E, Subsection (2) of the October 2014 agreement ("**EXHIBIT B**"), which has been removed as its intent has been fulfilled.

The Police Department FY 2015 – 2016 through FY 2017-2018 Animal Services & Vehicle Abatement Budget is not projected to increase in regards to the animal sheltering services agreement with the City of Salinas.

CONCLUSION:

This request is submitted for City Council consideration and possible action.

Respectfully submitted,

Richard J. Janicki, Jr.
Management Analyst
Police Department
City of Marina

REVIEWED/CONCUR:

Edmundo Rodriguez
Chief of Police
City of Marina

Layne Long
City Manager
City of Marina